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In The Supreme Court of The United States

76-411

TULSA THEATRICAL STAGE EMPLOYEES UNION, LOCAL 354,

Petitioner

vs.

BROADWAY THEATRE LEAGUE OF TULSA, INC.,

Respondent

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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STATEMENT OF THE CASE

MAY IT PLEASE THE COURT:

Respondent agrees generally with the statement of the case as presented in Petitioner's Brief. Respondent would make one comment, however, concerning what the Petitioner states to be Respondent's theory in the lower court. Petitioner would have this Court believe

that Respondent's position is that the passage of 5 O.S. 1971 §82.1 subsequent to the execution of the contract herein involved somehow changed the rights and obligations of the parties to that contract. In truth, the Respondent has consistently urged, and the Oklahoma Supreme Court so held in its opinion of May 18, 1976, that this controversy involves the interpretation of an ambiguous contract and that 5. O.S. 1971 §82.1 is interpreted in an effort to arrive at the intent of the parties to the contract. It has been the inability of Petitioner to grasp the basic premise that the new statute is only an interpretive tool and not the determinative factor in establishing the rights and duties under the contract herein involved that has caused this relatively simple controversy to remain unresolved for an extended period of time.

ARGUMENT

Petitioner urges that the decision of the Oklahoma Supreme Court of May 18, 1976, reformed an existing contract to conform with the provisions of a subsequently enacted statute. Petitioner reasons that such an action is violative of Petitioner's constitutional protection against impairment of contracts. As a result, Petitioner conjures up many evils which could result from allowing this opinion to stand and prays that this Court issue a writ of certiorari to review the judgment of

the Supreme Court of Oklahoma, and then that this Court enter an Order of its own remanding the cause to the Trial Court with directions that judgment be entered in favor of Petitioner. Respondent would urge that the Petitioner does not undestand nor appreciate the holding of the Oklahoma Supreme Court. The Court found that the "single issue before this Court is, therefore, to determine what the intent of the parties was at the time of the agreement was entered into". *Tulsa Theatrical Stage Employees Union, Local 354 v. Broadway Theatre League of Tulsa, Inc.*, Okl., 550 P. 2d 922 (1976). The Court went on to hold:

> "Holidays are days that the vast majority of the working force are free from work responsibilities, and it is generally considered an imposition to have to work on one of these days. It is, therefore, unreasonable to conclude that the parties intended double pay on days not designated at the time work was performed as a legal holiday."

The Court held that the contract was ambiguous and then put itself in the shoes of the parties and found that they intended that the members of the Union be paid double on the days when they had to work and most people did not. The Court found that the double pay was an effort to compensate the Union members for working under conditions that were less than ideal. The Court looked to the statute in force at the time of the dispute to determine what days the majority of people took as holidays, and, therefore, to determine what days the

parties intended the members of the Union to receive double pay.

As can be seen, the Oklahoma Supreme Court in no way reformed or altered the contract rights of either of the parties by its holding. All the Court did was implement the intent of the parties as the Court found the intent to be. This differs in its very nature from what Petitioner would have this Court believe that the Supreme Court of Oklahoma did in its holding. Petitioner contends that any deviation from the terms of the contract by postponing or accelerating the period of performance prescribed, imposing obligations not expressed, or dispensing with performance of conditions no matter how minute or immaterial their effect upon the contract of the parties seems to be, impairs a contract's obligation and is, therefore, constitutionally impermissible. Petitioner urges that the opinion of the Oklahoma Supreme Court accomplished at least one of these impermissible ends.

Petitioner fails, however, to demonstrate how the contract herein involved has been altered. The rights, duties and obligations of the parties remain the same as they did before the passage of the new statute or before the rendition of the opinion of the Oklahoma Supreme Court. The parties contracted to have Respondent pay double wages to members of the Union who worked on certain "holiday days." That obligation has not changed. If the Union members work on the

"holiday day" designated as George Washington's Birthday, they will be paid double. This has not been changed by either the passage of a new statute defining when George Washington's Birthday is to be celebrated or by the Oklahoma Supreme Court's opinion. Before and after the passage of the new statutes and the rendition of the opinion, Union members have the right to be paid double for working on the "holiday day" designated as George Washington's Birthday.

As pointed out by Petitioner, the "obligations of a contract are impaired by a law which renders them invalid, or releases or extinguishes them." *Sturges v Crowinshield,* 4 Wheat. 197, 4L. Ed. 529. It can be readily seen how the situation of the case at bar, as outlined above, differs from those in the cases cited by Petitioner. In *Sturges v. Crowninshield, supra.,* a state insolvency law, which discharged the debtor from liability, was held to be invalid as applied to contracts in existence when the law was passed. In *Green v. Biddle,* 8 Wheat. 1, 5 L.Ed. 547, the legislative acts which were successfully attacked exempted the occupant of land from payment of rents and profits to the rightful owner. The Court found this to be a part of a system the object of which was to compel the rightful owner to relinquish his lands or pay for all lasting improvements made upon them, without his consent or default. It is readily apparent that these

situations differ radically in their nature and degree from the case at bar and have no application here. In no way have the obligations of the contract involved herein been rendered invalid, released or extinguished.

That Petitioner does not understand or appreciate what the Oklahoma Supreme Court cited in its opinion of May 18, 1976, is evident from Petitioner's comment in its Petition for Writ of Certiorari on p. 19 where it states:

> "In the case at bar, Respondent has given its promise to pay the Petitioner's members double time wages on George Washington's Birthday, which was fixed by the existing statute at the time as February 22. The contract binds Respondent to pay that double time rate for all work performed on February 22 during the life of the contract, and this is the obligation of the contract."

But the Oklahoma Supreme Court expressly decided that the contract did not call for the Union members to be paid double for work done on any February 22 during the life of the contract. Rather, it was decided that they were to be paid double for any work done on the "holiday day" designated as George Washington's Birthday.

There can be little doubt that the Oklahoma Supreme Court reached the correct result concerning the proper interpretation of the contract. The paramount rule in interpretation of contracts is to ascertain the intention of the parties and give effect to the same.

Murphy v. Earp, Okl., 482 P.2d 731 (1963). The Court should place itself in the position of the parties when the agreement was made and look to the agreement prospectively rather than in retrospect. The Court must consider the instrument as drawn, its purposes and the circumstances surrounding the transaction, and from a consideration of all these elements, determine upon the sense or meaning of the terms used when the minds actually met. *Pepsi-Cola Bottling Co. v. Peerson*, Okl., 471 P.2d 924 (1970).

The contract called for double pay on the "holiday day" designated as George Washington's Birthday. Black's Law Distionary (rev. 4th Ed. 1968) defines holiday as "a day set apart for commemorating some important event in history." A holiday is normally "created and designated as such by statute, and ordinarily a day cannot become a legal holiday without statutory sanction." 40 C.J.S. *Holidays*, §2 (1944). Thus, holiday means the day set apart for celebrating a certain event. The contention of Petitioner that the parties intended that February 22 of each year be one of the days that the double pay provision be in force was effectively rejected by the Oklahoma Supreme Court. There is nothing in the contract to suggest that February 22 has any significance in and of itself. The use of the term "holiday day" clearly indicates the intention that the Union

members receive double pay when they are required to work on days when most people are not required to do so. The extra pay was to compensate the employees for the inconvenience and disruption of having to work on a holiday. Thus, the Oklahoma Supreme Court simply held that the parties intended for the Union members to be paid double on the designated "holiday days." The soundness of this decision is unassailable, and its effect is in no way constitutionally repugnant.

In addition, even if the Oklahoma Supreme Court's decision did involve a situation where a contract was reformed or in some other way altered, the operation of the impairment of contracts clause is much narrower than the Petitioner alleges. The limits of the operation of the impairment of contract clause have long been established. As early as 1905 in *Manigault v. Springs*, 26 S. Ct. 128, 199 U. S. 473 (1905), this Court held:

> "It is the settled law of this court that statutes impairing the obligation of contract does not prevent the state from exercising such powers as vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which in its various ramifications, is known as the police power, is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort, and general welfare of the people, and is paramount to any rights under contracts between individuals."

In *Home Building and Loan Ass'n v. Blaisdell*, 54 S. Ct. 231, 290

U.S. 398 (1934), this Court said in discussing the impairment of contracts clause:

> "To ascertain the scope of the constitutional prohibition, we examine the course of judicial decisions in its application. These put it beyond question that the prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula."

The court added at p. 238:

> "Not only is the constitutional provision qualified by the measure of control which the state retains over remedial processes, but the state also continues to possess authority to safeguard the vital interests of its people. It does not matter that legislation appropriate to the end 'has the result of modifying or abrogating contracts already in effect.' . . . Not only are existing laws read in contracts in order to affix obligations as between parties, but the representation of essential attributes of sovereign power is also read into contract as postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of the government by virtue of which contractual relations are worthwhile, — a government which retains adequate authority to serve the peace and good order of society. This principal of harmonizing the constitutional prohibition with the necessary residum of state power has had progressive recognition in the decisions of this court." *Home Building and Loan Ass'n v. Blaisdell, supra.*

Most recently in *City of El Paso v. Simmons*, 85 S. Ct. 577, 379 U.S. 497 (1965), this Court characterized the *Blaisdell* opinion as "a comprehensive restatement of principals underlying the application of the contract clause." And in *Simmons*, the court found that the state has the sovereign right to protect the general welfare of the people. Once in this domain of that reserved power of the state wide discretion

must be given to the state legislation as to what is or what is not necessary.

In the case at bar, it cannot be seriously disputed that the establishment of legal holidays is within the government's perogative under its police power as promotion of general welfare. Therefore, even if the passage of the statutes herein involved in some way reforms the contract between the parties, the statutes would not be repugnant to the impairment of contracts clause of the United States Constitution. This kind of statute is outside the scope of that clause and as a consequence is not affected by it. The statute is a valid exercise of the government's police power and its provisions must be given preference over the provisions of a private contract. Therefore, even if it is accepted that the statutes altered the contract, such alteration is not constitutionally impermissible and effect must be given to its provisions.

CONCLUSION

Acceptance of Petitioner's theory would be contrary to the real interests of the working man. There would be literally thousands of Union contracts to be changed if Petitioner's position is accepted. No longer would there be three-day weekend holidays that are now enjoyed. Instead, the holidays would be celebrated on the

"traditional" day and pay and leave policies that are involved in the various Union contracts would have to be interpreted accordingly. It was organized labor that sponsored and lobbied for the legislation establishing most of the holidays to fall on Monday. The intent was to insure that the working man would be able to take advantage of a three-day weekend which would give him more flexibility in how he was to spend his time off than if the holiday fell in the middle of the week. The finding as urged by Petitioner would be contrary to the wishes of the working man and would frustrate an attempt to arrive at a more beneficial holiday schedule.

In any event, the new legislation in no way alters or reforms the contract between the parties. And even if it did, such alteration is not repugnant to the impairment of contracts clause of the United States Constitution as is urged by the Petitioner.

WHEREFORE, Respondent prays that the Petition for Writ of Certiorari filed by the Tulsa Theatrical Stage Employees Union, Local 354, be denied.

Respectfully submitted,

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